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October 15, 2014

VIA ELECTRONIC & US MAIL

Ms. Stephanie Vaughn
ATTN: Lower Passaic River Remedial Project Manager
Emergency and Remedial Response Division
U.S. EPA, Region 2
290 Broadway, 20th Floor
New York, New York 10007

**Re: Monthly Progress Report No. 25 – September 2014
 Lower Passaic River Study Area (LPRSA)
 River Mile 10.9 Removal Action
 CERCLA Docket No. 02-2012-2015**

Dear Ms. Vaughn:

de maximis, inc. is submitting this Monthly Progress Report for the above-captioned project on behalf of the Cooperating Parties Group (CPG) pursuant to the Administrative Settlement Agreement and Order on Consent for Removal Action (Settlement Agreement or AOC). The Progress Report satisfies the reporting requirements of Paragraph 28 of the River Mile (RM) 10.9 Settlement Agreement.

(a) Actions which have been taken to comply with this Settlement Agreement during the month of September, 2014.

Meetings/Conference Calls

- None

Correspondence

- On September 9, CPG responded to EPA's August 26, 2014 e-mail directing CPG to manually remove elevated armor stones from the RM 10.9 Removal Area cap. CPG provided EPA with a scope of work that included the manual relocation of armor stone and a schedule for that would start on September 29.
- On September 15, CPG submitted to EPA the RM 10.9 Removal Action Progress Report No. 24 for August 2014.
- On September 16, CPG submitted to EPA a letter of notification identifying Aqua Survey Incorporated (ASI) as the chosen contractor to perform the elevated armor stone relocation project for the RM 10.9 Removal Area cap.
- On September 16, EPA informed CPG that it had received complaints related to the exposed geotextile located adjacent to the river bank at the RM 10.9 Removal Area cap.

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- On September 17, CPG responded to EPA that exposed geotextile in question was outside of the capped area and was not a result of erosion. CPG suggested that relocated elevated armor stone should be placed on areas of exposed geotextile.
- On September 17, EPA agreed with CPG suggestion to relocate elevated armor stone on exposed geotextile.
- On September 18, CPG informed EPA that elevated armor stone relocation work would begin on September 29, 2014 at 7:00 AM.
- On September 22, EPA provided approval of ASI as the contractor to perform the elevated armor stone relocation work at the RM 10.9 Removal Area cap.
- On September 22, EPA provided CPG with a copy of a RM 10.9 presentation provided to the CAG leadership. EPA informed CPG that it intended to invite the CPG to participate in the November CAG meeting.
- On September 23, CPG provided EPA with the ASI H&S Plan for the RM 10.9 elevated rock relocation work.

Work

- CPG began the elevated armor stone relocation project at the RM 10.9 Removal Area cap on September 29 and 30, 2014 as directed by EPA.

(b) Results of Sampling and Tests

- None

(c) Work planned for the next two months with schedules relating to the overall project schedule for design completion and construction

- CPG will complete the elevated armor stone relocation project at the RM 10.9 Removal Area cap in early October 2014.
- CPG will respond to EPA comments on the draft RM 10.9 Removal Action Final Report when received.

(d) Problems encountered and anticipated problems, actual or anticipated delays, and solutions developed and implemented to address actual or anticipated problems or delays

- The CPG believes that only physical monitoring is sufficient and required to monitor the effectiveness and integrity of the cap. If the RM 10.9 Removal Area cap is similar and consistent to that implemented as any final remedy for the LPRSA, then the need for long-term chemical monitoring for the cap should be determined as part of the overall

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LPRSA long-term monitoring plan and regular five-year reviews. This appears to be the rationale developed for the Hudson River and Onondaga Lake and should apply to the RM 10.9 Removal Action as well.

The RM 10.9 Removal Action was implemented to reduce the risk associated with the direct contact exposure to sediments by people due to elevated concentrations of COPCs in RM 10.9 surface sediments. The cap physically prevents direct contact to underlying sediment by river users. As an added benefit an active layer was included to further enhance the protectiveness of the cap. In the near term, the surface of the cap is likely to be recontaminated by sediment deposition which is likely to be in the low 100s of ppt of TCDD – two orders of magnitude less than the pre-dredge surface of the RM 10.9 Removal Area. The CPG does not agree with Region 2's rationale for an aggressive short-term chemical monitoring program of the RM 10.9 cap. It is unnecessary to evaluate the short-term effectiveness of the cap to chemically isolate COPCs when the primary goal of the Removal Action and the construction of the cap were to remove and reduce the direct contact risk due to the presence of elevated concentrations in the surface sediment.

On the Hudson River, Region 2 requires monitoring of the Phase 2 engineered caps for physical integrity and chemical isolation effectiveness. The chemical isolation effectiveness monitoring will occur in designated sentinel areas 10 years after completion of cap construction in those areas and then at 10-year intervals, or as soon as practical after a flood event exceeding the design recurrence interval for those caps. For Onondaga Lake, long-term monitoring of the cap includes routine physical and chemical monitoring which is anticipated to occur 5, 10, 20, and 30 years after construction begins. For the Lower Passaic River Study Area, EPA has required no chemical monitoring at the Lister Avenue Phase 1 Removal Action site. Region 2's requirements for the RM 10.9 Removal Area are completely inconsistent with the chemical monitoring requirements for frequency and schedule established at other Region 2 capping sites such as the Hudson River and Onondaga Lake.

The CPG provided comments to Region 2 on March 31, 2014 in response to the Region's January 24, 2014 comments on CPG's draft QAPP Worksheet 9 (dated January 22, 2014). Region 2 and the CPG have initiated dispute resolution to resolve the differences on the scope of the RM 10.9 Long Term Monitoring Plan. The CPG provided its concerns with the Region's proposed scope of long term monitoring on June 23, 2014.

- The CPG strongly disagrees with the EPA's July 15, 2013 letter denying the Force Majeure condition outlined in CPG's June 29, 2013 letter. EPA's rationale for denial is inconsistent with terms and definitions in the AOC. Both the inoperability of the Bridge Street Bridge due to Hurricane Sandy and the repeated delays in the repaired motors being shipped and reinstalled - have been and continue to be clearly beyond the control of the CPG. Moreover, Hudson and Essex Counties failed to meet their obligations

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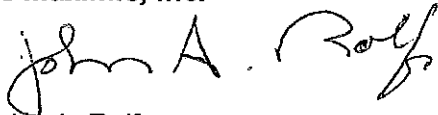
under Federal Regulations to properly maintain and operate their bridges and to provide proper notice of the status of their bridges to US Coast Guard, mariners and the general public. Finally, the CPG has voluntarily provided funds to the Counties to operate the bridges with no regulatory requirement to do so. As noted above it is the Counties' obligation to ensure that their bridges are operating and ready to open upon notice. CPG has addressed this issue in its July 31, 2013 letter to EPA and to which the Region has not responded.

- There is still no resolution concerning the Tierra/Maxus/Occidental (TMO) UAO and their participation in the RM 10.9 Removal Action. As documented in the CPG's correspondence of July 27, 2012 and September 7, 2012, the offer from TMO was inadequate and provided no meaningful value to the RM 10.9 Removal Action.

If you have any questions, please contact Bill Potter, Rob Law or me at (908) 735-9315.

Very truly yours,

de maximis, inc.



John A. Rolfe

RM 10.9 Removal Action Project Coordinator

cc: Jennifer LaPoma, EPA
Pat Hick, EPA Office of Regional Counsel
William Hyatt, CPG Coordinating Counsel
Jay Nickerson, NJDEP
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